IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 93 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

PATEL MANIBHAI GIRDHARBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 93 of 1993

MR MB GANDHI for Petitioner No. 1

Mr.A.J.Desai, learned A.P.P.for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/07/2002

ORAL JUDGEMENT

1. The appellant/original complainant filed one complaint under Sec. 138 of the Negotiable Instruments Act in the court of J.M.F.C. Modasa in Criminal Case no. 1302/92. The appellant has challenged the order of

dismissal of his complaint on 6.10.92 on the ground that on 6.10.92 the appellant was not present on account of personal reasons. Moreover, on 6.10.92, the matter was kept for service of summons to original opponent no. 2 and the matter was not kept for final hearing. Therefore, the learned trial court has erred in dismissing the complaint and prayed for allowing this appeal by directing the trial court to restore the criminal case no. 1302/92 in the court of J.M.F.C.Modasa.

2. Mr.A.J.Desai, learned A.P.P. for the State vehemently stated that it is the duty of the complainant to remain present on all the dates, however, on perusal of the record he stated that the matter requires to be restored in the court of J.M.F.C.Modasa for rehearing.

3. I have heard the learned advocate for the appellant and learned A.P.P. for the State. The respondent no. 2 & 3 are served but did not remain present personally or through advocate. It is unfortunate that the matter was listed for service of summons and on the first date of hearing, the trial court judge dismissed the criminal case without recording the reasons. The trial court should not have dismissed the complaint by giving short reason. He should have given a reasoned order. In view of the aforesaid circumstances of the case, the appeal is allowed. The trial court (J.M.F.C.Modasa) is ordered to restore the criminal case no. 1302/92 to file and proceed with the matter according to law.

4. It may be noted that the matter is of 1992 and therefore the J.M.F.C., Modasa is hereby directed to give priority to the matter and dispose of the matter as early as possible.

(SHARAD D DAVE, J)

srilatha